SCHOOL COUNSELLORS AND THE LAW

A HANDBOOK FOR NEW BRUNSWICK SCHOOL COUNSELLORS

by

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CONTENTS

		Page
I.	**Introduction**	1
II.	**Court Structure in New Brunswick**	2
III.	**Liability**	4
	A. Criminal	5
	B. Quasi-Criminal	5
	C. Civil - The Law of Tort	6
	i) Intentional	7
	ii) Unintentional (Negligence)	7
IV.	**Specific Issues**	11
	A. Criminal Code Offences	11
	i) Abduction and Harbouring	11
	ii) Aiding and Abetting	11
	iii) Accessory After the Fact	12
	iv) Counselling the Commission of an Offence	12
	v) Criminal Negligence	12
	vi) Obscenity	13
	B. Confidentiality	13
	C. Individual and Group Counselling	14
	D. Birth Control	15
	E. Abortion	16
	F. Testing	18
	G. Defamation	18
	H. Duty to Report	19
V.	**Conclusion**	22
	Footnotes	24
	Appendix A - C.G.C.A. Guidelines for Ethical Behaviour	26
	Appendix B -Criminal Code provisions referred to in IV. A. herein	33
	Appendix C - Family Services Act, section 30	39

I. INTRODUCTION

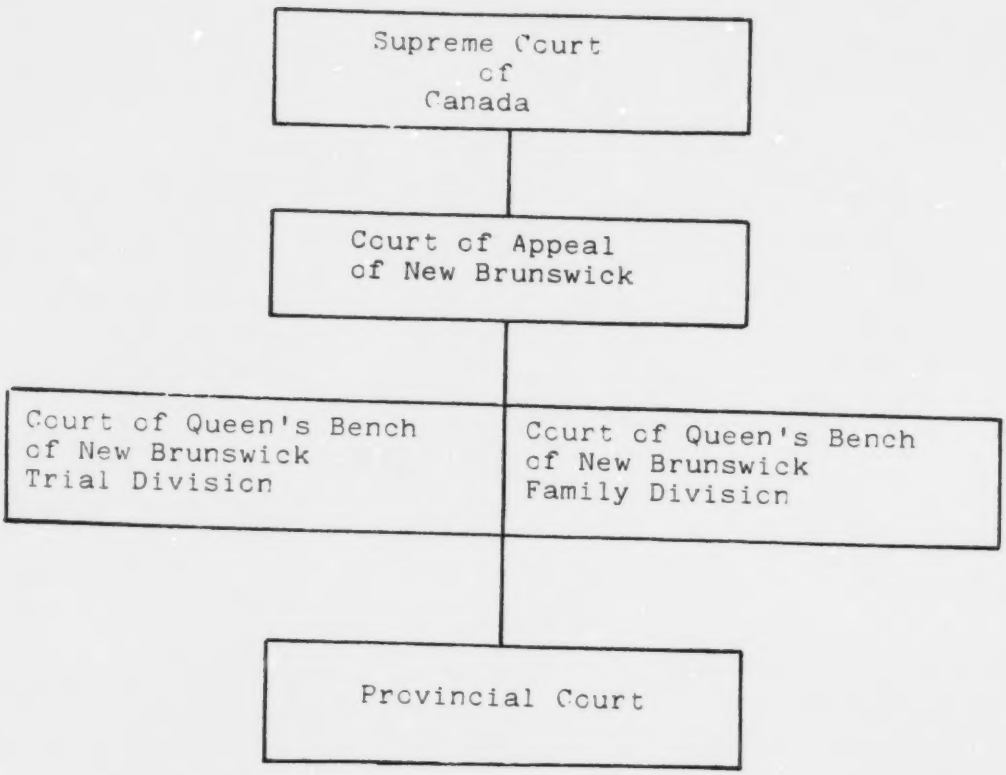
This handbook has been prepared at the request of the Student Services Branch of the Department of Education in response to a growing number of inquiries regarding potential liability with respect to school guidance counsellors. Theoretically, guidance counsellors in a school system have been trained to deal with the developmental needs of students. This area is often inter-related with academic achievement and it is expected that the counsellor will be able to provide guidance to students, parents and school personnel in this respect. However, many guidance counsellors feel they are being called upon to provide counselling services in areas which extend far beyond what could be classified as developmental problems. Hence, the concern with respect to liability increases.

The opinions expressed herein constitute the opinions of the author and are not to be taken as definitive statements of law. Legal opinions vary and in the absence of case law, it is impossible to do more than provide opinion with respect to specific issues. The handbook should, however, provide some guidelines to which counsellors can refer and if necessary, seek further legal advice when confronted with a particular problem.

It is important to realize that the handbook deals with liability in a legal context. There are undoubtedly numerous situations where problems arise that would not result in liability in a court of law but could, nonetheless, make a counsellor's life miserable. In short, there is a distinction between a situation where you "take the heat" and a situation where you are legally liable. This handbook deals solely with legal liability.

II. COURT STRUCTURE

For our purposes, the following diagram illustrates the court structure for the Province of New Brunswick.


Supreme Court of Canada
Court of Appeal of New Brunswick
Court of Queen's Bench of New Brunswick Trial Division
Court of Queen's Bench of New Brunswick Family Division
Provincial Court

In addition to the courts included in the diagram, there is a Federal Court of Canada (trial and appeal divisions) which essentially deals with matters arising with respect to federal tribunals and boards, federal Crown corporations, income tax, patents, aeronautics and matters primarily of a federal nature.

The Supreme Court of Canada is the Court of last resort. It is a court of principle and aside from a few exceptions enumerated in the Criminal Code[1], the Supreme Court hears only those cases which deal with issues of national importance.

The Court of Appeal of New Brunswick is, in most cases, the court of last resort in New Brunswick. This court deals with questions of law and in some cases questions of mixed law and fact. Usually, with respect to the latter, leave to appeal must be obtained. The Court of Appeal hears appeals of matters which were tried in the Court of Queen's Bench and criminal appeals from the Provincial Court if the offences in question were indictable.

The Court of Queen's Bench of New Brunswick, Family Division deals with family matters such as divorce, marital property applications, custody, access and support matters and their enforcement. All matters under the Family Services Act[2] are heard in the Court of Queen's Bench, Family Division.

The Court of Queen's Bench of New Brunswick Trial Division has jurisdiction over civil matters, serious criminal offences and those criminal offences where an accused is permitted to elect his mode of trial. When an accused elects, the election is for trial before a Provincial Court judge, trial before a judge alone (in New Brunswick this would be a Queen's Bench judge) or trial before a judge and jury. All jury trials are conducted in the Court of Queen's Bench. Additionally, the Court of Queen's Bench Trial Division is the appeal court for summary conviction criminal offences. It also has jurisdiction to conduct a judicial review of decisions of administrative bodies with respect to questions of law and jurisdiction.

The Provincial Court deals with quasi-criminal offences (violations of provincial statutes) and criminal offences. The Criminal Code classifies offences as either indictable or summary conviction, indictable being the more serious. Some offences can be either indictable or summary in which case the Crown chooses the manner in which the offence will be prosecuted. Summary conviction offences and certain indictable offences are tried in the Provincial Court. For indictable offences where an accused can elect his mode of trial and he chooses trial in the Court of Queen's Bench, the preliminary inquiry is held in provincial court. This is also true with respect to those indictable offences which must be tried in the Court of Queen's Bench. The preliminary inquiry is conducted in the same manner as a trial but its purpose is to determine whether or not there is sufficient evidence to commit the accused to stand trial for the offence with which he is charged. The Provincial Court also (at present) deals with all young offenders.

When a legal rule is established in a court, it is binding on lower courts. If you look at the diagram, it is simple to see how this works. All courts are bound by decisions of the Supreme Court of Canada. The Court of Appeal, however, is bound only by decisions of the Supreme Court of Canada.

III. LIABILITY

Liability can arise as a result of criminal law or as a result of civil law. The areas are distinct and separate from each other although there may be situations which give rise to liability in both contexts.

A. Criminal

The federal government has exclusive power to legislate with respect to criminal law[3] and the provincial governments have no jurisdiction in this area. Essentially, criminal law involves disputes between an individual and the state; it is of a public nature. The Crown prosecutor acts on behalf of the state in prosecuting an individual who has committed an act against the state. The "wrong" may have been committed against an individual but it is perceived to have been committed against the public at large. The state imposes the penalty and in most cases, a victim is not compensated. To be convicted of a criminal offence, the state must establish beyond a reasonable doubt that the person alleged to have committed the offence, in fact committed it.

Criminal law is codified and criminal offences along with the appropriate penalties are contained in the Criminal Code, and amendments thereto as well as in other federal statutes such as the Narcotic Control Act[4], and the Food and Drug Act[5]. Citations for criminal matters always refer to the Crown as a party, i.e. R. v. John Smith (Regina v. John Smith).

B. Quasi-Criminal

Offences against provincial statutes are not truly criminal acts but the procedure with respect to prosecuting such offences is the same as that for criminal offences. There are as well statutory punishments or penalties for violations of provincial statutes and we therefore generally refer to these offences as quasi-criminal. The most common violations of a quasi-criminal nature are offences under the

Motor Vehicle Act[6], the Liquor Control Act[7], and the Fish and Wildlife Act[8]. Guidance counsellors, in a professional context concerned about personal liability with respect to students, are not likely to be concerned about offences against these statutes.

The Family Services Act, which imposes an obligation on counsellors to report physicial, sexual and emotional abuse of children is a provincial statute with which guidance counsellors must be concerned.

Case citations in quasi-criminal offences are the same as criminal cases. In prosecutions for offences against provincial statutes, the Crown in right of the province is the party acting against the alleged offender.

C. Civil

The area known as civil law encompasses disputes between private persons, for example, disputes arising from property rights, broken contracts, claims arising from motor vehicle accidents, etc. Liability arises when an individual conducts himself or herself in such a way that another individual is harmed or wronged. Private wrongs are enforced by the person suffering the harm in order to recover compensation for the loss or wrong. The standard of proof in civil cases is a balance of probability. Citations for civil cases refer to the parties i.e. the individuals involved in the dispute, John Smith v. Mary Jones. (John Smith is the plaintiff and Mary Jones is the defendant.)

In some situations, conduct can give rise to both criminal and civil liability. Assault for example, is a criminal offence.[9] If a person assaults another person and knocks the latter's teeth out, the assaulter can be

prosecuted and punished in criminal court. The person with the missing teeth however, receives no compensation. That individual can bring a civil action against his assaulter to recover the costs associated with replacing the teeth as well as compensation for the pain and suffering involved.

Civil liability, for purposes of this handbook, is the law of tort. Tort law includes practically all civil wrongs with the exception of breach of contract and family law matters such as divorce, separation, custody, etc. Tort is the word used to describe the "wrong" done.

A tort can be intentional or unintentional. An intentional tort is one where the wrongdoer intended to cause harm. It matters not that the wrongdoer caused more harm than was intended; if some harm was intended, the wrongdoer is liable for whatever harm resulted. For example, if you throw an object at an individual (intending to scare the person but not hit him) and the object in fact hits the person and injures him, you are liable for the injury. Intentional torts include among others, assault, battery and false imprisonment.

An unintentional tort is what we commonly refer to as negligence. Negligence occurs when an individual knew or ought to have known or foreseen that his or her actions would cause harm. The law of negligence is governed primarily by common law (law developed over the years as a result of decided cases) as opposed to statute law (law contained in federal and provincial statutes).

The basis of negligence is that an individual should be able to predict when his or her actions might create risks that could cause harm to others. It is not a defence to say you did not foresee the harm if a reasonable person would have foreseen it.[10]

Legal liability for negligence depends on the existence of three elements, all of which must be present:

(i) duty of care
(ii) breach of duty
(iii) damage

Damage is a legal term used to describe the physical injury, economic loss or in some cases, the nervous shock that results from the wrong. In short, damage is the injury that results from the breach of the duty.

A damages award is an amount of money that is awarded by the court to compensate a victim for the wrong incurred. Damages awards include special damages which refer to out of pocket expenses (including medical) associated with the harm suffered and general damages, which includes compensation for what cannot be enumerated as special damages. Most commonly, general damages refer to pain and suffering. Each of the three elements mentioned above have been the subject of litigation and a body of caselaw exists with respect to each element.[11]

For present purposes, we will proceed on the premise that a guidance counsellor owes a duty of care to the students in his or her school. Liability would arise if this duty had been breached and damage resulted. It is important to reiterate that the absence of any one of the elements will result in exculpation from liability. For example, there may be a clear duty of care, breach of the duty (therefore negligence) but no damage. Without damage, there can be no successful negligence action. If you provide your car keys to an unlicenced student under the age of 16, you are obviously negligent. If that student successfully drives your vehicle around the block without injuring himself or another person or thing, there is no actionable negligence because there is no damage.

A further requirement for liability is that the negligent conduct must be the cause of the injury i.e. there must be a causal connection between the two.[12] For example, you have students in your office, you leave the office and during your absence, one student hits another student and the latter sustains injury. Assuming that you failed to adequately supervise (breach of duty), the question becomes whether or not your presence would have made a difference, i.e. would the wrong have been committed in any event? Is the injury causally connected to your negligence?

The problem, in the case of guidance counsellors, is that you are dealing with emotional problems. Mental health is a far more nebulous area than that of physical health. It is impossible to provide advice regarding a course of action until a specific situation arises, particularly when no two cases are identical and each will turn on its own facts. A further difficulty (in providing advice) is that there are no reported cases in this area and therefore little guidance as to how the courts would approach any given situation. Traditionally, in cases arising from a school setting, the courts, in assessing the conduct of school personnel (in most cases, teachers) have cited the test of the careful or prudent parent[13], i.e. the conduct of the person in question is hypothetically measured against what a careful or prudent parent would have done in a similar circumstance. In cases involving other professionals, the test has been what a reasonably prudent practitioner practising the same calling would have done in the same or similar circumstances.[14] The standard or test in Canada with respect to guidance counsellors will most likely be that of the careful or prudent parent since the Supreme Court of Canada has enunciated that as being the appropriate standard to be applied with respect to "school authorities".[15]

In a United States case[16], a counsellor was sued by

the parents of a female student who committed suicide six weeks after her guidance counsellor had terminated interviews with her. The parents alleged that the counsellor was negligent in failing to suggest psychiatric help, in failing to inform them of their daughter's emotional state and in terminating the interviews. The court concluded that there was no negligence. The suicide of the student was not foreseeable by one not trained in psychiatry and the parents had led no evidence to establish that psychiatric help would have prevented the suicide. The standard or test applied by the court was that of a careful parent.

It is worth noting that in June, 1981, the Canadian Guidance & Counselling Association approved "Guidelines for Ethical Behaviour". A copy of the guidelines is included as Appendix A. While not conclusive, these would probably be referred to in any litigation involving guidance counsellors particularly if an alleged wrongdoer violated one or more of the guidelines. Counsellors are well advised to become familiar with the C.G.C.A. Guidelines for Ethical Behaviour and to avoid flagrant violations.

A knowledge of the elementary principles discussed herein should provide a basic framework from which counsellors can operate on a daily basis. Three elements are necessary to constitute a successful negligence action and the basic principle underlying a civil negligence action is that an innocent party should be compensated for any loss caused by a wrongdoer.

You should further be aware that the Schools Act[17] sets out a procedure with respect to improper treatment of students. Section 58 of the Act prohibits court action being taken against a teacher in this regard without the complainant first submitting a written complaint to a meeting of the school board and allowing the school board 15 days to

investigate. "Teacher" is defined in section 1(b) of the Act as "a person holding a licence or permit to teach issued by the Minister, and includes a principal, a district superintendent, an assistant district superintendent, and a district school supervisor". Although there is no specific inclusion of guidance counsellor in the definition, guidance counsellors in New Brunswick are licenced teachers and would therefore probably fall within the definition.

IV. SPECIFIC ISSUES

A. Criminal Code Offences

While it is unlikely that guidance counsellors will incur criminal liability in their professional capacities, counsellors should be aware of the existence of certain Criminal Code provisions. The sections referred to below are reproduced in their entirety as Appendix B.

Sections 280 and 281 deal with the offences of abduction and harboring. These sections could become relevant in a situation where a child under the age of sixteen years runs away from home and comes to you. There are two defences available with respect to this offence: parental consent and situations of danger and imminent harm.

Section 21(1) deals with aiding and abetting and makes any person (who aids or abets another in the commission of a criminal offence) a party to the offence. Aiding generally means assisting or helping while abetting has been regarded as instigating or encouraging. Mere presence is not sufficient to constitute an offence; there must be some act to facilitate the commission of the crime such as keeping watch or encouraging. However, it has been suggested[18] that

mere presence without action to prevent crime may constitute encouragement where the person committing the offence might reasonably expect the other person to object.

Section 23(1) makes it an offence to be an accessory after the fact. Mere failure to report the commission of a crime is not an offence but a positive act or statement that might assist a student in avoiding detection would be interpreted otherwise.

Section 22 deals with counselling the commission of an offence and makes the counsellor a party to the offence. It is unlikely that guidance counsellors would ever be involved in counselling the commission of an offence but again it has been suggested[19] that a possible problem might arise if a person advocated criminal conduct in a situation where another might be influenced by that opinion. For example, a counsellor who stated to a student that he (the counsellor) enjoyed smoking marijuana might be perceived as having counselled the commission of the offence if the student subsequently began smoking marijuana.

Section 23.1, enacted in 1986, provides that a person charged with an offence under sections 21 to 23 of the Criminal Code can be convicted of the offence even if the person who actually committed the offence cannot be convicted of the offence.

Sections 219 to 221 inclusive deal with criminal negligence. It is not likely that counsellors would be concerned with these provisions because criminal liability requires wanton or reckless disregard for the lives or safety of other persons. Failure to report abuse as required by the Family Services Act in circumstances which obviously required a reporting could constitute criminal negligence.

Section 163 deals with obscenity. Again, it would indeed be a rare occurrence if a counsellor were charged under the Criminal Code with an offence in relation to obscenity. However, to ensure that no such possibility exists, counsellors should exercise caution with respect to a review of any literature displayed in their offices and accessible to students. The definition of the offence is very broad and includes distribution and circulation of any obscene written matter, picture, model, phonograph record or other thing whatsoever. The motives of the accused are irrelevant and the fact that the accused was ignorant of the nature or presence of the matter is not a defence. There is an absolute defence if it is established that the public good was served by the acts that are alleged to constitute the offence and that the acts did not extend beyond what served the public good.

B. Confidentiality

The issue of confidentiality is obviously central to the development of an effective relationship between a student and his or her counsellor. The confidential relationship is however, subject to the counsellor's professional responsibilities i.e. the obligation to report abuse pursuant to the Family Services Act and the absolute obligation to breach the confidentiality if the student poses a serious danger to himself or others. Generally, counsellors are informed by lawyers that the only privilege which exists with respect to confidential communications is that of solicitor-client. This is essentially true insofar as the courtroom is concerned. If a counsellor is called as a witness at a trial, the counsellor must disclose the content of any and all communications with the student in question if the communications are relevant to the issues before the court. However, the obligation to disclose relates solely to the courtroom and there is no such

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obligation with respect to pre-trial procedures. Hence, a counsellor, in the absence of a subpoena with respect to his or her files, is not required to disclose confidential communications before taking the witness stand.

There is the subsidiary issue of the admissability into evidence of such communications when a student is prosecuted under the Young Offenders Act.[21] This issue is an evidentiary one that arises from the common law requirement that a confession made to a person in authority must be voluntary i.e. made without fear of prejudice or hope of advantage.[22] Normally, "person in authority" refers to police officers. However, I have been advised that the issue does arise with respect to school personnel in youth court proceedings. In fact, a counsellor will in all likelihood be required to disclose the communications but this will be done on a voir dire (a trial within a trial, the purpose of which is to allow the trial judge to hear the evidence in order to determine whether or not it is admissible), at the end of which the trial judge will decide as a matter of law whether or not the communications will be admitted as evidence or excluded.

C. Individual and Group Counselling

A great percentage of a guidance counsellor's time is spent in this area. Common sense dictates that you should deal only with those problems that fall within the realm of your training and expertise. This does not mean that you cannot provide assistance or guidance in a crisis situation but it does mean that if you know or have reason to know that a student is suffering from difficulties beyond your expertise, you have a duty to consult and/or refer the

student to the appropriate person and to inform the student's parents. In the case of a student whom you feel presents a danger to himself or others, you have an additional duty to ensure that appropriate measures are taken with respect to supervision of the student.

In group situations, the duty to supervise assumes greater importance merely because of the numbers. The counsellor who undertakes group counselling, particularly when the group is composed of emotionally distraught students, should know what he or she is doing, should ensure that the group is not too large and if a student becomes upset, the counsellor should take special precautions to ensure the student's safety.

D. Birth Control

Counselling and advising with respect to the use of contraceptives at the junior and senior high school levels is a controversial topic. There is no question that a counsellor cannot dispense contraceptives. A physician who prescribes treatment is governed by the Medical Consent of Minors Act[23] which lowers the age of majority from 19 to 16 years. Again, there is a paucity of caselaw on the topic. In British Columbia, a doctor was found guilty of unprofessional conduct in inserting an I.U.D. in a 15 year old girl without her parents' consent. However, the evidence was to the effect that he kissed and fondled the girl while she was under medication.[24] In the United States, courts have struck down, as unconstitutional, statutes that imposed criminal penalties on those who disseminated birth control information.[25]

It is difficult to imagine a sitution in which merely providing information regarding contraceptives would be actionable. The Young Offenders Act,[26] unlike its predecessor, does not contain a section with respect to contributing to the delinquency of a juvenile. Moreover, it would be difficult to argue that a counsellor, in providing such information, is not acting in the best interests of the student.

However, it is worth noting that providing information with respect to the various birth control devices and their availability is distinct from providing instruction in the use of the contraceptives. Counsellors are cautioned to restrict their practice to providing information.

Most areas have access to Reproductive Health Clinics which are staffed with qualified personnel trained specifically to deal with this area. Counsellors are advised to utilize the clinics and refer students with inquiries in this regard. Referral to the clinics has presented a problem in some areas with respect to transportation. Counsellors should always be aware that students attending school are entrusted to the care of the school personnel for the duration of the school day. Counsellors who refer students to clinics during school hours should take appropriate measures regarding the transportation of such students.

E. Abortion

This is what is commonly referred to by politicians as a hot potato. As a matter of constitutional law, the provinces would ordinarily have jurisdiction with respect to abortion.[27] The federal government, in making abortion a criminal offence assumed authority in this area by virtue of

its exclusive jurisdiction with respect to criminal law. As you are undoubtedly aware, the Supreme Court of Canada, on January 28, 1988, struck down as unconstitutional, the therapeutic abortion laws of Canada.[29] In March, 1989, the Supreme Court of Canada declined to hear the Borowski case wherein the issue was centered around the rights of the fetus.

Previous to January 28, 1988, a counsellor who provided information to a student with respect to procuring an abortion could face criminal charges. That is no longer the case.

Because the federal government had enacted legislation with respect to abortion, the provincial governments did not. For the present, the entire matter is in limbo. On February 12, 1988, the Minister of Health & Community Services for New Brunswick issued a policy with respect to abortions. Essentially, the policy states that only therapeutic abortions performed in approved hospitals are permitted in New Brunswick, that a second medical opinion is necessary before a therapeutic abortion can be performed and that Medicare will not fund abortions performed outside New Brunswick. Dr. Henry Morgantaler recently challenged the provincial policy in the Court of Queen's Bench and by decision dated April 13, 1989, Mr. Justice Stevenson ruled that the policy "that no abortion will be recognized as an entitled service...is invalid with respect to abortions performed outside the Province of New Brunswick".[30] The province did not appeal the decision but Justice Minister James Lockyer has indicated that regulations will be enacted to deal with the matter.

In the absence of legislation, it is difficult to provide an opinion for the use of counsellors. However, as a general rule, guidance counsellors are not trained to deal with abortion. A student who advises you that she has had or intends to have an abortion should be referred to the Reproductive Health Clinic in your area where personnel are

trained to deal with not only the physical but the emotional aspects involved.

F. Testing

This area will be dealt with only briefly since it is highly unlikely that assessment, by a counsellor alone, would determine student placement. However, in the United States, a school psychologist tested a child who was wrongfully classified as retarded. The boy spent 11 years in classes for the mentally handicapped.[31] In a decision which has been highly criticized, the Court of Appeal decided that the courtroom was not the proper forum in which to assess the adequacy of student placement.

There has been no Canadian case in this area and negligence actions in the United States have not been successful.[32] Common sense more than the law dictates that caution should be exercised in testing if the results could have a significant effect on the lives of students.

G. Defamation

This topic is included solely because you should be aware of its existence. It will be dealt with in a summary manner.

The torts of libel and slander constitute defamation. Libel is written; slander is oral. Any publication (communication to anyone other than the person defamed) that tends to lower the reputation of a person among his or her fellows and is based on falsehood is defamation. It is the

perception of the reasonable receiver that is relevant, not the intention of the sender. The form of publication can be subtle and indirect and includes innuendo (pictures and gestures). The area of defamation constitutes an exception to the law of negligence in that the success of the action does not require proof of damage.

There are several defences available with respect to defamation. First is the defence of justification or truth. If it is established the publication was true, justification operates as a complete defence even in situations where the statements were made maliciously. The second defence is that of absolute privilege which applies to statements made in Parliament, court and correspondence between solicitor and client. The third defence, qualified privilege, extends to statements made in the course of a legal duty, in furtherance of a public interest or as the result of a direct invitation. The final defence is that of fair comment which encompasses matters of public interest and provides a safeguard in relation to free and critical discussion of public affairs.[33]

This topic may be relevant with respect to school records and notations thereon. Teachers have a duty to evaluate and are therefore protected by the defence of qualified privilege. The defence would not extend to opinions. Any other potential problem areas are self-evident.

H. Duty to Report - Family Services Act

Section 30 of the Family Services Act is reproduced as Appendix C. This provision imposes an obligation on "any person" to inform the Minister without delay with respect to

matters of child neglect or abuse.[34] The obligation arises when you have "information causing [you] to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually illtreated or otherwise abused."[35] The categories are obviously broad and cover a variety of situations. Counsellors have expressed concern and uncertainty regarding what course of action should be taken in certain situations. For example, a student relates an isolated incident during which a parent struck a child in the heat of an argument. While physical violence is never condoned, it is unlikely that in law, such conduct would constitute physical illtreatment or abuse. (Different considerations would apply if the child sustained physical injury) Counsellors will undoubtedly be faced with situations which require judgment calls. The basis of the obligation to report is suspicion. In the absence of suspicion, there is no duty to report. In situations where counsellors are not comfortable making the judgment call, consultation with another counsellor, school administrator or the intake worker for child protection (in hypothetical terms and without disclosing names) could provide a second opinion and assist in the ultimate decision.

Section 30(2) provides that the obligation supercedes any confidential relationship except for that of solicitor-client. Professional persons acquiring the information in their professional capacities commit an offence if they fail to comply with the obligation contained in section 30(1).[36] Professional person includes a guidance counsellor.[37]

Regulation 81-1321, section 2(2) purportedly passed pursuant to section 143 of the Family Services Act states that for the purposes of Part III of the Family Services Act,

"child" means a person actually or apparently under the age of 16 and includes a disabled person actually or apparently under the age of 19. Since section 30 of the Family Services Act falls within Part III of the Act, the Department of Health & Community Services does not become involved in the investigatory problems with respect to reports of suspected abuse of children over 16 years of age. Guidance counsellors are advised to report these cases to the local police authorities.

As a matter of law, the author submits that the position taken by the Department is not correct. Section 143(d) of the Family Services Act provides that the Lieutenant-Governor in Council may make regulations prescribing age groups for the purpose of the definition of "child in care". Child in care is one who has been placed under protective care or any child who is in the care of the Minister under the terms of a custody agreement or order, a guardianship agreement or order, a supervisory order, etc. Regulations passed pursuant to statutory authority must be consistent with the purpose as stated in the enabling statute. Section 143 of the Act does not authorize the Lieutenant-Governor in Council to make regulations prescribing age groups for the purpose of section 30 of the Act. Section 30 refers to a child. Child is defined in section 1 as a person actually or apparently under the age of majority. The Age of Majority Act[38] prescribes the age of majority as being 19 years of age.

As a practical matter, in the absence of a judicial determination on this issue or in the absence of an amendment to the Act or the regulation, guidance counsellors have little choice but to deal with children over the age of 16 in the manner suggested by the Department of Health & Community

Services.

CONCLUSION

As previously mentioned, there is a paucity of case law with respect to guidance counsellors and their duty to students. That is not to say that litigation has been non-existent with respect to school settings but the reported cases deal primarily with injuries arising from the alleged negligence of school authorities in science labs, in physical education classes, in the school yard, on field trips and during extra curricular games and sports. These activities bear little resemblance to the concerns of guidance counsellors with respect to liability. Nonetheless, the basic principles established in relation to negligence apply to any situation. The following quotation from the hallmark negligence case[39] is appropriate.

> The proposition which these recognized cases suggest, and which is, therefore, to be deduced from them, is that, whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.

An awareness of the provisions of the Criminal Code referred to herein and a basic knowledge of the law of negligence should provide sufficient knowledge to enable the counsellor to make daily judgments and above all, to realize when it is advisable to seek further advice.

This handbook is designed to provide a sound legal opinion in regard to the subject matter covered. If legal

advice is required with respect to a specific situation, the services of a lawyer should be sought.

Finally, you should be aware that the Board of Management in 1986 adopted the Personal Liability Protection Policy which essentially incorporates the common law with respect to vicarious liability. In essence, the policy provides that where it is alleged that an employee is negligent, the employer (i.e. the Province) will defend, negotiate or settle claims and will, when necessary pay all loss, damages, costs or expenses, provided the employee has acted in good faith and provided the employee has acted within the scope of his employment. When the employer defends the employee, the employer has conduct of the action and the employee must co-operate in all matters (except in a pecuniary way) relating to the defence of the claim. The employer will not defend a claim which is already covered by any policy of insurance effected directly or indirectly for the benefit of the employee. The policy also covers instances where members of the N.B.T.F. are involved in extra-curricular activities and non-teaching duties as established by the appropriate School Board in the particular school district. When the employer is required to make a payment on behalf of an employee, it will not seek indemnification from the employee on whose behalf the payment is made.[40]

FOOTNOTES

1. Criminal Code and amendments thereto, R.S.C. 1970, c. C-34
2. Family Services Act, S.N.B. 1980, c. F-2.2
3. Constitution Act, 1867, section 91(27)
4. Narcotic Control Act, R.S.C. 1970, c. N-1
5. Food and Drug Act, R.S.C. 1970, c. F-27
6. Motor Vehicle Act, R.S.N.B. 1973, c. M-17
7. Liquor Control Act, R.S.N.B. 1973, c. L-10
8. Fish and Wildlife Act, S.N.B. 1980, c. F-14.1
9. Supra, footnote 1, section 266
10. See generally: Linden, Canadian Tort Law, 4th Ed. (Toronto: Butterworths, 1987) at pages 1-8
11. Ibid. pages 87-90
12. Ibid. pages 94-96
13. Myers v. Peel County Board of Education, [1981] 2 S.C.R. 21
14. Supra, footnote 10 at pages 133, 134
15. Supra, footnote 13 at page 31
16. Bogurst v. Iverson (1960), 102 N.W. (2d) 228 (Wisc. S.C.)
17. Schools Act, R.S.N.B. 1973, c. S-5
18. McKay, Education Law in Canada (Toronto: Edmond Montgomery, 1984), page 214
19. Ibid. at page 215
20. Ibid. at page 132
21. Young Offenders Act, R.S.C. 1985, c. Y-1

22. Ibrahim v. R., [1914] A.C. 599 (P.C.)

23. Medical Consent of Minors Act, S.N.B. 1976, c. M-6.1

24. Re. Medical Act; Re. Dr. D. (1970), 73 W.W.R. 627 (B.C.S.C.)

25. Hopkins and Anderson, The Counsellor and The Law, 2nd Ed. (Alexandra: AACD Press, 1985) at page 34

26. Supra, footnote 21

27. Supra, footnote 2, section 92(13)

28. Ibid, section 91(27)

29. R. v. Morgantaler, [1988] 1 S.C.R. 30; 82 N.R.1

30. Morgantaler v. Attorney General for New Brunswick (Court File Number F/M/103/88)

31. Hoffman v. Board of Education of City of New York, (1978) 410 N.Y.S. (2d) 99 (C.A.)

32. Supra, footnote 18 at page 160

33. Ibid at pages 275-279

34. Supra, footnote 8, section 30 (1)

35. Ibid.

36. Ibid. section 30(3)

37. Ibid. section 30(10)

38. Age of Majority Act, R.S.N.B. 1973, c. A-4, section 1(1)

39. Donaghue v. Stevenson, [1932] A.C. 562 (H.L.) at 571 citing Heaven v. Pender (1883), 11 Q.B.D. 503

40. Personal Liability Protection Policy, Board of Management Minute 86.0431 as amended by Board of Management Minute 87.0625, June 24 1987

APPENDIX A

C.G.C.A. GUIDELINES FOR ETHICAL BEHAVIOUR

GUIDELINES FOR ETHICAL BEHAVIOUR

CGCA

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1981 - 83

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CANADIAN GUIDANCE AND COUNSELLING ASSOCIATION
SOCIÉTÉ CANADIENNE D'ORIENTATION ET DE CONSULTATION

OFFICE OF THE PRESIDENT — CABINET DU PRÉSIDENT

June 1981

Dear Colleague:

This code of Ethics was approved by the Board of Directors in June 1981 and it is now incumbent upon each of us, as members of CGCA, to conduct our practice of counselling and guidance according to the standard described. We owe a debt of gratitude to Mike Springer for his work in preparing these guidelines for ethical behaviour.

D. Stuart Conger
President

128

GUIDELINES FOR ETHICAL BEHAVIOUR

PREAMBLE

One of the characteristics of a profession is the existence of Guidelines for Ethical Behaviour which assist its members in keeping their activities within the bounds of accepted standards of preparation and competence. The specification of ethical standards enables a professional association to clarify for its present and future members and to those served by its members, the nature of their professional and ethical responsibilities.

Therefore, these Guidelines for Ethical Behaviour of the Canadian Guidance and Counselling Association are intended as a basis for the conduct of its members engaged in providing guidance and counselling services.

These members are involved in a wide range of activities encompassed in a variety of work settings including education, government, industry and business. This reflects the diversity of the Association's interest and influence. This same diversity also creates complexities which must be addressed in setting standards for ethical conduct of association members.

The Guidelines for Ethical Behaviour are intended to inspire each member to engage in professional behaviour of the highest order. The basic values underlying the Guidelines for Ethical Behaviour are the dignity, liberty and integrity of the persons for whom or on whose behalf services are performed. Ethical principles and guidelines become meaningful only when they are interpreted in the light of these basic values and within the context of the circumstances in which they are applied.

SECTION "A"
GENERAL

1. The maintenance of high standards of professional competence is a responsibility which is shared by all association members.

2. A member exerts appropriate influence to foster the development and improvement of the profession and continues professional growth throughout the member's career.

3. A member expects ethical behaviour of all professional associates who are members of CGCA, at all times. The member is obligated, in situations where information is possessed raising serious doubts as to the ethical behaviour of other members, to take action that is conducive to rectifying these conditions.

4. A member is obligated to be concerned with the degree to which guidance activities of non-members represent competent and ethical behaviour. It is a member's responsibility to take appropriate action that is conducive in rectifying unsatisfactory conditions.

5. A member must not seek self-enhancement by expressing evaluations or comparisons damaging to other professional workers.

6. A member should not claim or imply professional qualifications exceeding those possessed and is responsible for correcting any misrepresentations of qualifications by others.

7. A member providing services for personal remuneration shall, in establishing fees, ensure that fees are consonant with the profession and that they are in accord with charges made for comparable services by other professional persons.

8. Members, in providing information to the public or to subordinates, peers or superiors, have a clear responsibility to see that the information is accurate, unbiased and consists of factual, objective data. The manner of presentation should be conducted ethically and professionally as well.

9. A member has an obligation to ensure that evaluative information about clients will be communicated only to other professionals who are also assisting the client and only upon the express consent of the client.

10. A member shall offer professional services only within the context of a professional relationship. These services may be provided only in a reciprocal or face-to-face relationship. Information services may be offered through the media.

11. Members, in seeking employment, are expected to accept only positions that they are qualified to assume. They should be aware of the established procedure of the employment setting and be prepared to comply with these practices or not accept employment if they are in disagreement.

SECTION "B"

COUNSELLOR-COUNSELLEE RELATIONSHIP

This section refers to individual and/or group counselling relationships.

1. A member's primary obligation is to respect the integrity and promote the welfare of the counsellee(s) whether the counsellee(s) is (are) assisted individually or in groups. In a group setting, the member-leader is also responsible for protecting the individuals from physical and/or psychological trauma resulting from interaction within the group.

2. The counselling relationship and information resulting therefrom must be kept confidential in a manner consistent with the obligations of the member as a professional person. In a group setting the member is expected to set a norm of confidentiality regarding all group participants' disclosures.

3. Records of the counselling relationship, including interview notes, test data, correspondence, tape recordings, and other documents, are to be considered professional information for use in counselling and they are not part of the official records of the institution or agency in which the counsellor is employed. Revelation to others of counselling material should only occur upon the express consent of the counsellee.

4. Data obtained from a counselling relationship for purposes of counsellor training or research shall be confined to only that content that will ensure that the identity of the counsellee is protected.

5. The counsellee should be informed of the conditions under which counselling assistance may be received at or before the time the counsellee enters such a relationship. Particular care should be taken in the event that conditions exist about which the counsellee would not likely be aware. In individual or group situations the member-leader is obligated to make clear the purposes, goals, techniques, rules of procedure, and any limitations that may affect the continuance of the relationship.

6. The member has the responsibility to screen prospective group participants. The member should maintain an awareness of the group participants' compatibility throughout the length of the group.

7. The member reserves the right to consult with any other professionally competent person about the counsellee. In choosing professional consultants the worker must avoid placing the consultant in a conflict of interest situation. If the identity of the counsellee is to be revealed, it should only be done with the express consent of the counsellee.

8. A member shall decline to initiate or shall terminate a counselling relationship when the member cannot be of professional assistance to the counsellee either because of lack of competence or personal limitation. In such instances, the counsellee shall be referred to an appropriate (professional) specialist. If the counsellee declines the suggested referral, the member is not obligated to continue the relationship.

9. The member who asks or allows a counsellee to reveal personal information in the course of interviewing, testing or evaluation does so only after ascertaining that the counsellee or person responsible for the counsellee is fully aware of the purposes of the interview, testing, or evaluation and of the ways in which the information may be used.

10. When a member learns through a counselling relationship of conditions which are likely to harm others, the member is expected to report the condition to an appropriate responsible authority. If the information has been received in confidence, the member reveals the identity of the counsellee only when there is clear and imminent danger to an individual or to society and then only to an appropriate professional worker or public authority.

11. If counsellees indicate that they are intending to harm themselves, then the member is expected to take direct personal action to inform responsible authorities. The member should consult with other professionals and should only assume responsibility for the counsellee's action after careful deliberation.

12. The member takes into account and shows prudential regard for the social codes and moral expectations of the community within which the member works.

13. A member does not begin a counselling relationship with an individual who is receiving counselling from another professional person until that other professional has been contacted and approval has been obtained. If after entering a counselling relationship the member discovers the counsellee is already in a counselling relationship with another professional person, the member is obligated to gain the consent of the other professional to continue the relationship or terminate the relationship, unless the counsellee chooses to terminate the other relationship.

14. Should a member be engaged in a work setting which calls for any variation from the above principles, the member is obligated to ensure that such variations are justifiable under the conditions and that they are clearly specified and made known to all concerned with such counselling services.

SECTION "C"

MEASUREMENT & EVALUATION

1. Members recognize the limits of their competence and do not offer services, administer tests or use techniques which are beyond their preparation and competence or which fail to meet professional standards established in particular fields.

2. Members must consider carefully the specific validity, reliability and appropriateness of the test(s) before selecting them for use in a given situation or with a particular counsellee.

3. In general, test results provide only one factor of a variety of pertinent data for personnel and guidance decisions. It is the responsibility of the member to supply adequate orientation and information to the examinee(s) so that the results of testing may be placed in proper perspective with other relevant factors. The effects of socioeconomic, ethnic and cultural factors on test scores will therefore have to be recognized.

4. When test results and/or other assessment data used for evaluation are communicated to parents, students, or other appropriate persons, they must be accompanied by an adequate interpretation or by counselling.

5. Psychological test scores (as contrasted to interpreted test results) are released only to persons qualified to interpret and use them properly.

6. When making any statements to the public about tests and testing, care will be taken to give accurate information and to avoid any false claims or misconceptions.

7. Tests should be administered as prescribed in the administration manual. Departures from these procedures are permitted only when conducting research and even here must be in accord with professional standards. Any unusual behaviour or irregularities during the testing session which may affect the interpretation of the test scores, must be fully noted and reported. Unsupervised test-taking or the administration of tests through the mails is unethical. However, the use of instruments that are so designed or standardized to be self-administered and self-scored, such as some interest inventories, is permitted.

8. Psychological tests and other assessment devices, whose value in part depends on their novelty to persons taking them, are limited to persons with the professional interest and competence such that they will safeguard their use. Prior information, coaching or the reproduction of such material will not be condoned.

9. A member has the responsibility to inform examinees about the purposes of testing. The criteria of the examinees' welfare and/or explicit prior understanding with them shall determine who will receive test results.

10. The member must proceed with caution in evaluating and interpreting the performance of minority group members or of other persons who are not represented in the norm group on which the instrument was standardized.

11. Members will not appropriate, reproduce or modify established tests or portions thereof without the expressed permission and adequate recognition of the original author, publisher and copyright holder.

SECTION "D"

RESEARCH AND PUBLICATION

1. The principal researcher is responsible for ethical research practise while others involved in the research activities share ethical obligation and full responsibility for their own actions.

2. Members are responsible for the welfare of all research subjects used. They should avoid causing injurious psychological, physical or social effects on their subjects.

3. All research subjects should be informed of the purpose of the study except when withholding information from them is essential to the investigation. In such cases the member is expected to take corrective action as soon as possible following the research.

4. Human subjects should participate in research on a voluntary basis. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects.

5. A member must conduct the research so as to minimize the possibility of misleading findings.

6. In reporting on the research results, the member must publish a full report mentioning any variables and conditions that might affect the outcome of the investigation or the interpretation of the data.

7. The member has an obligation to collaborate with colleagues by making available original research data to qualified others who may wish to replicate or verify the study.

8. The identity of the research subjects must be disguised unless otherwise authorized by the subjects when the researcher is supplying data from the research to others or in reporting the results.

9. A member has an obligation to give due credit to those who have contributed significantly to the research, in accordance with their contributions.

10. If a member agrees to cooperate with another individual in published research and/or joint authorship of the results, then they are obligated to be punctual in their performance and be responsible for the completeness and accuracy of the information provided.

CGCA acknowledges with gratitude the gracious permission of the American Personnel and Guidance Association to excerpt, modify or adapt parts of its Code of Ethics.

APPENDIX B

CRIMINAL CODE PROVISIONS REFERRED
TO IN IV A. HEREIN

ABDUCTION OF PERSON UNDER SIXTEEN - Definition of "guardian"

280. (1) Every one who, without lawful authority, takes or causes to be taken an unmarried person under the age of sixteen years out of the possession of and against the will of the parent or guardian of that person or of any other person who has the lawful care of charge of that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) In this section and sections 281 to 283, "guardian" includes any person who has in law or in fact the custody or control of another person. R.S., c. C-34, s.249; 1980-81-82-83, c. 125, s.20

ABDUCTION OF PERSON UNDER FOURTEEN

281. Every one who, not being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, unlawfully takes, entices away, conceals, detains, receives or harbours that person with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years. R.S., c. C-34, s. 250; 1980-81-82-83, c. 125, s. 20

Parties to Offences

PARTIES TO OFFENCE - Common intention

21. (1) Every one is a party to an offence who

(a) actually commits it,

(b) does or omits to do anything for the purpose of aiding any person to commit it; or

(c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who know or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence. R.S., c. C-34, s. 21

ACCESSORY AFTER THE FACT - Husband or wife, when not accessory

23. (1) An accessory after the fact to an offence is one who, knowing that a person has been a party to the offence, receives, comforts or assists that person for the purpose of enabling that person to escape.

(2) No married person whose spouse has been a party to an offence is an accessory after the fact to that offence by receiving, comforting or assisting the spouse for the purpose of enabling the spouse to escape. R.S., c. C-34, s. 23; 1974-75-76, c. 66, s. 7

PERSON COUNSELLING OFFENCE - Idem - Definition of "counsel"

22 (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

(2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known as likely to be committed in consequence of the counselling.

(3) For the purposes of this Act, "counsel" includes procure, solicit or incite. R.S., c. C-34, s. 22; R.S.C. 1985, c. 27 (1st Supp.), s.7(1).

WHERE ONE PARTY CANNOT BE CONVICTED

23.1 For greater certainty, sections 21 to 23 apply in respect of an accused notwithstanding the fact that the person whom the accused aids or abets, counsels or procures or receives, comforts or assists cannot be convicted of the offence. 1986, c. 32, s. 46.

Criminal Negligence

CRIMINAL NEGLIGENCE - Definition of "duty"

219. (1) Every one is criminally negligent who

(a) in doing anything, or
(b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

(2) For the purposes of this section, "duty" means a duty imposed by law. R.S., c. C-34, s. 202

CAUSING DEATH BY CRIMINAL NEGLIGENCE

220. Every one who by criminal negligence causes death to another person is guilty of an indictable offence and is liable to imprisonment for life. R.S., c. C-34, s. 203.

CAUSING BODILY HARM BY CRIMINAL NEGLIGENCE

221. Every one who by criminal negligence causes bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years. R.S., c. C-34, s. 204

Offences Tending to Corrupt Morals

CORRUPTING MORALS - Idem - Defence of public good - Question of law and question of fact - Motives irrelevant - Ignorance of nature no defence - Definition of "crime comic" - Obscene publication

163. (1) Every one commits an offence who

(a) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatever; or

(b) makes, prints, publishes, distributes, sells or has in his possession for the purposes of publication, distribution or circulation a crime comic.

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

(a) sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatever;

(b) publicly exhibits a disgusting object or an indecent show;

(c) offers to sell, advertises or publishes an advertisement of, or has for sale or disposal, any means, instructions, medicine, drug or article intended or represented as a method of causing abortion or miscarriage; or

(d) advertises or publishes an advertisement of any means, instructions, medicine, drug or article intended or represented as a method for restoring sexual virility or curing venereal diseases or diseases of the generative organs.

(3) No person shall be convicted of an offence under this section if he establishes that the public good was served by the acts that are alleged to constitute the offence and that the acts alleged did not extend beyond what served the public good.

(4) For the purposes of this section, it is a question of law whether an act served the public good and whether there is evidence that the act alleged went beyond what served the public good, but it is a question of fact whether the acts did or did not extend beyond what served the public good.

(5) For the purposes of this section, the motives of an accused are irrelevant.

(6) Where an accused is charged with an offence under subsection (1), the fact that the accused was ignorant of the nature or presence of the matter, picture, model, phonograph record, crime comic or other thing by means of or in relation to which the offence was committed is not a defence to the charge.

(7) In this section "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

(a) the commission of crimes, real or fictitious; or

(b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene, R.S., c. C-34, s. 159.

APPENDIX C

FAMILY SERVICES ACT

S.N.B. 1980, c. F-2.2, section 30

27(6) The Minister may issue a certificate stating the amount of compensation due and payable pursuant to subsection (5) and the name of the person from whom the compensation is due and payable, and may file the certificate in The Court of Queen's Bench of New Brunswick, and when the certificate is entered and recorded it becomes a judgment of the Court and may be enforced as a judgment obtained in the Court by Her Majesty against the person named in the certificate for a debt of the amount specified in the certificate.

28 Where an operator is convicted of an offence under this Part, the court may, in addition to any penalty imposed in respect thereof, make a further order on the recommendation of the Minister, directing, subject to such terms and conditions as may be set out in the order, the operator

(a) to allow the investigation,

(b) to close the community placement resource,

(c) to operate the community placement resource in accordance with the directive of the Minister, or

(d) to remove the residents or participants from the community placement resource under conditions acceptable to the Minister,

and the failure to comply with any such order shall be deemed to be a contempt in the face of the court and punishable as such.

29 Any person affected by a decision of the Minister under this Part may request the Minister to review his decision in accordance with section 15.

PART III

PROTECTION SERVICES

30(1) Any person who has information causing

27(6) Le Ministre peut délivrer un certificat indiquant le montant échu et exigible à titre de dédommagement conformément au paragraphe (5) et le nom du débiteur, et déposer le certificat devant la Cour du Banc de la Reine du Nouveau-Brunswick; lorsqu'il est déposé et enregistré, le certificat devient jugement de la cour et peut être exécuté comme un jugement obtenu devant la cour par Sa Majesté contre la personne nommée dans le certificat pour une créance du montant indiqué dans le certificat.

28 Lorsqu'un responsable est reconnu coupable d'une infraction à la présente Partie, la cour peut, en sus des amendes imposées à ce sujet et sur la recommandation du Ministre, rendre une ordonnance supplémentaire enjoignant au responsable, sous réserve des conditions exposées par l'ordonnance,

a) de permettre l'enquête,

b) de fermer le centre de placement communautaire,

c) d'assurer le fonctionnement du centre en se conformant aux instructions du Ministre;

d) de faire sortir du centre les pensionnaires et les participants, dans des conditions acceptables aux yeux du Ministre; ou

la non-observation de cette ordonnance est réputée être un outrage au tribunal commis devant le tribunal; elle est, à ce titre, passible d'une peine.

29 Toute personne touchée par une décision qu'a prise le Ministre en vertu de la présente Partie peut demander à ce dernier de réviser cette décision, conformément à l'article 15.

PARTIE III

SERVICES DE PROTECTION

30(1) Toute personne qui possède des renseigne-

him to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually illtreated or otherwise abused shall inform the Minister of the situation without delay.

30(2) Subsection (1) applies notwithstanding that the person has acquired the information through the discharge of his duties or within a confidential relationship, but nothing in this subsection abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client.

30(3) Any professional person who fails to comply with subsection (1) having acquired the information referred to in subsection (1) in the discharge of his professional responsibilities commits an offence.

30(4) Where the Minister has reasonable grounds to suspect that any person has failed to comply with subsection (1), the Minister may, in addition to any action he may take with respect to prosecution, require any professional society, association or other organization authorized under the laws of the Province to regulate the professional activities of the person to cause an investigation to be made into the matter.

30(5) No action lies, in relation to the giving of information under subsection (1), against a person who in good faith complies therewith.

30(6) Except in the course of judicial proceedings, no person shall reveal the identity of a person who has given information under subsection (1) without that person's written consent.

30(7) Any person who violates subsection (6) commits an offence.

30(8) Upon completion of any investigation undertaken by the Minister as a result of any information provided by any person, the Minister may so

ments l'amenant à soupçonner qu'un enfant a été abandonné, victime de négligence matérielle, physique ou affective, ou de sévices ou atteintes sexuelles, ou maltraité de toute autre façon, doit en informer sur-le-champ le Ministre.

30(2) Le paragraphe (1) s'applique même si la personne a obtenu ces renseignements dans l'exercice de ses fonctions ou à titre confidentiel, mais le présent paragraphe ne saurait abroger le caractère confidentiel de la relation qui peut exister entre un avocat et son client.

30(3) Tout professionnel qui, ayant recueilli des renseignements visés au paragraphe (1) dans l'exercice de ses responsabilités professionnelles, omet de se conformer au paragraphe (1), commet une infraction.

30(4) Lorsque le Ministre a des motifs raisonnables de soupçonner qu'une personne a omis de se conformer au paragraphe (1), il peut, outre toute action qu'il peut intenter en justice, exiger que toute société, association ou autre organisation professionnelle autorisée en vertu des lois de la province à réglementer les activités professionnelles de cette personne, fasse effectuer une enquête sur cette question.

30(5) Aucune action ne peut être intentée relativement à la fourniture de renseignements en vertu du paragraphe (1) contre une personne qui se conforme de bonne foi à ce paragraphe.

30(6) Nul ne peut révéler, si ce n'est au cours d'une procédure judiciaire, l'identité d'une personne qui a donné des renseignements en vertu du paragraphe (1) sans le consentement écrit de celle-ci.

30(7) Toute personne qui contrevient au paragraphe (6) commet une infraction.

30(8) Dès que l'enquête entreprise par le Ministre à la suite des renseignements fournis par une personne est terminée, le Ministre peut en aviser la

advise the person who provided the information, and shall inform

(a) the parent;

(b) any person identified during the investigation as a person neglecting or ill-treating the child; and

(c) the child, if in the opinion of the Minister he is capable of understanding,

as to the findings and conclusions drawn by the Minister.

30(9) Notwithstanding the *Evidence Act*, a spouse may be compelled to testify as a witness in the course of judicial proceedings brought against his spouse under this Act with respect to abuse or neglect of a child or an adult.

30(10) For the purposes of subsection (3) "professional person" means a physician, nurse, dentist or other health or mental health professional, a hospital administrator, a school principal, school teacher or other teaching professional, a social work administrator, social worker or other social service professional, a child care worker in any day care center or child caring institution, a police or law enforcement officer, a psychologist, a guidance counsellor, or a recreational services administrator or worker, and includes any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards a child.

31(1) The security or development of a child may be in danger when

(a) the child is without adequate care, supervision or control;

(b) the child is living in unfit or improper circumstances;

personne ayant fourni les renseignements, et doit informer

a) le parent;

b) toute personne identifiée lors de l'enquête comme négligeant ou maltraitant l'enfant; et

c) l'enfant, si le Ministre estime qu'il est capable de comprendre,

de ses constatations et des conclusions qu'il a tirées de l'enquête.

30(9) Par dérogation à la *Loi sur la preuve*, une personne peut être tenue de témoigner au cours d'une procédure judiciaire intentée contre son conjoint en vertu de la présente loi pour mauvais traitements ou négligence à l'égard d'un enfant ou d'un adulte.

30(10) Aux fins du paragraphe (3), «professionnel» désigne un médecin, infirmier, dentiste ou autre professionnel de la santé ou de l'hygiène mentale, administrateur d'hôpital, directeur d'école, instituteur, professeur ou autre éducateur, administrateur en service social, travailleur social ou autre professionnel en service social, employé s'occupant d'enfants dans une garderie ou un établissement de soins aux enfants, agent de police ou d'exécution de la loi, psychologue, conseiller d'orientation, administrateur ou employé de services des loisirs, et s'entend également de toute autre personne dont l'emploi ou l'occupation comporte la responsabilité de s'occuper d'un enfant.

31(1) La sécurité ou le développement d'un enfant peuvent être menacés lorsque

a) l'enfant est privé de soins, de surveillance ou de direction convenables;

b) l'enfant vit dans des conditions inappropriées ou inconvenantes;